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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION

Thirteenth periodic report of States parties due in 1994

Addendum

BRAZIL*

[23 November 1995]

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* This document contains the tenth, eleventh, twelfth and thirteenth periodic reports due on 5 January 1988, 1990, 1992 and 1994 respectively. For Brazil's ninth periodic report and the summary record of the meetings at which the Committee considered that report, see documents CERD/C/149/Add.3 and CERD/C/SR.788.

The information submitted by Brazil in accordance with the consolidated guidelines for the initial part of the reports of States parties is contained in the basic document (HRI/CORE/1/Add.53).

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* Available for consultation in the files of the secretariat.

Introduction

1. Having ratified the Convention in 1968, Brazil has submitted to CERD nine reports, the last of which in 1986. Since then, administrative difficulties associated with the increased complexity which the elaboration of texts of this kind represents in a transparent and democratic society resulted in delays in the updating of information. The comprehensive character of the present report aims precisely at compensating for these delays through the presentation of a wide picture of the national situation regarding the matter.

2. Elaborated by the Nucleus of Studies on Violence of the University of São Paulo, with additions provided by the Secretariat for the Rights of the Citizenship, of the Ministry of Justice, under the coordination of the Ministry of External Relations, the present report is another illustrative example of the dialogue and cooperation that the Brazilian Government cultivates with the civil society in the search for solutions to the national problems and, in particular, of those involving human rights.

I. GENERAL

Protection of human rights in the international framework

3. Brazil ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 27 March 1968, and it entered into force in the country in January 1969. 1/ Through its accession to the Convention, the Brazilian State acknowledges that the protection of basic human rights is not and should not be confined to action on the part of the State. International protection instruments are an additional guarantee of such rights and enhance the legal capacity to sue of victims of the violation of basic rights.

4. In the sphere of international protection against different forms of discrimination, Brazil has always pledged full support for United Nations instruments and initiatives. Brazil signed and ratified (Legislative Decree No. 2, 1951) the Convention on the Prevention and Punishment of the Crime of Genocide. More recently, it supported the United Nations Declarations on the Elimination of All Forms of Racial Discrimination and on the Elimination of Discrimination Against Women. Brazil likewise ratified the Convention on the Elimination of All Forms of Discrimination Against Women in February 1984, subsequently, in 1994, withdrawing the reservations it had made at that time.

5. Still in the framework of international treaties, Brazil's accession to the Inter-American Convention on Human Rights, to the International Covenant on Economic, Social and Cultural Rights and to the International Covenant on Civil and Political Rights, ratified in 1992, should be underscored. It is worth recalling that article 26 of the International Covenant on Civil and Political Rights expressly states that:

> "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal

and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."

Protection of human rights in the domestic framework

6. Previous Brazilian reports to CERD were elaborated within the framework and under the aegis of the 1967 Constitution and of Constitutional Amendment No. 1 of 17 October 1969. In 1988, Brazil promulgated a new Constitution. There is thus a need to describe the changes that have been introduced and to report on the present state of Brazilian legislation with regard to the rights enshrined in the Convention.

7. In the domestic sphere, there are a number of provisions prohibiting discrimination and upholding equality between different racial, ethnic, religious or any other such groups.

Brazil's Federal Constitution

8. The 1988 Constitution is a juridical-political milestone in the institutionalizing of human rights in Brazil. It states that Brazil's international relations are governed, inter alia, by the principle of the prevalence of human rights (art. 4, II). Brazil is a democratic State under the rule of law founded, inter alia, on citizenship and human dignity (art. 1, III). The Constitution proclaims, moreover, that the rights and guarantees contained therein do not rule out others deriving from the regime and principles adopted or those contained in international treaties to which Brazil is a party. This brings Brazil's constitutional framework under the mantle of legal protection afforded by other fundamental rights which, though they may not actually be inscribed in the text of the 1988 Constitution, are inherent in its principles.

9. Provisions of major relevance regarding human rights are set out in paragraphs 1 and 2 of article 5 of the Constitution, which determine that "the norms defining basic rights and guarantees are immediately applicable" and that the rights and guarantees enshrined in the Constitution do not exclude others established by international treaties to which Brazil is a party. Thus, by giving the issue of human rights special treatment, acknowledging their universal application and immediate efficacy, the Brazilian Constitution has become a model worthy of emulation with regard to the treatment of human rights.

10. The specificity of the international treaties for the protection of human rights is thus acknowledged by the 1988 Brazilian Constitution: pursuant to the terms of article 5, paragraph 2, of the Constitution, the rights guaranteed therein are incorporated into the set of rights enshrined in the text of the Brazilian Constitution. They therefore become directly and immediately securable within the framework of the country's domestic legal order (art. 5, para. 1).

11. Equality is the first human right secured by the Constitution. In both formal and material terms, equality is enshrined in article 5. On a formal level, equality is ensured with regard to the law. This constitutional

precept rules out the possibility of either discrimination on any grounds, including sex or race, or privilege to waive strict application of the law. In material terms, the Constitution treats the principle of equality in a more complex manner when it guarantees the right to material equality regarding concrete living conditions. Thus, in dealing with the issue of equality, the Brazilian Constitution proscribes unequal treatment, on the one hand, and imposes on the State an obligation to take positive action to promote equality, on the other. This often implies meting out unequal treatment to individuals.

12. By treating unequal people unequally, to the extent of their inequality, the law will actually be providing substantively equal treatment for all. An example of this approach is the order the Constitution establishes (art. 37, VIII) that a percentage of all public posts and jobs be reserved for the handicapped; or the progressive scale for taxation (art. 145, para. 1); or else the determination that the labour market for women be protected by means of specific incentives (art. 7, XX). According to the Brazilian Constitution, therefore, it is not illegitimate to discriminate positively with a view to improving the living conditions of a particular group or segment that has traditionally been denied privileges within the framework of society. This standpoint is likewise consistent with article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination.

13. Besides proscribing the passing of discriminatory laws, the Brazilian Constitution forbids the practice of any other kind of discrimination, such as racism, which the new Constitution classifies as an unbailable, imprescriptible crime as opposed to a mere criminal misdemeanour, as had previously been the case (art. 5, XLII).

14. The Federal Constitution contains a separate chapter acknowledging the right of Indians to maintain their own forms of social organization, and imposing on the State the obligation to demarcate the lands they traditionally occupy, to afford protection for their property and belongings. Duly demarcated Indian territories are inalienable and unavailable, the rights pertaining thereunto being imprescriptible (art. 231, para. 4).

15. It should be added that the text of the Constitution authorizes federal intervention in the states in order to secure observance of the constitutional principle of human rights, among other reasons (art. 34, VII, b).

Federal legislation

16. In the infra-constitutional sphere, the first law to deal with the punishment of racism was Law No. 1390/51, which declared acts resulting from racial or colour prejudice to be criminally offensive. This law, the full text of which is transcribed in the report Brazil submitted in 1970, stressed that any refusal of access to public or private establishments on grounds of racial or colour prejudice should be punished by imprisonment (maximum of one year) in addition to a fine.

17. In legal terms, racism was considered not to be a crime as such but rather as a contravention or misdemeanour, that is, a lesser offence. This

view persisted until the promulgation of the 1988 Constitution which made racism an unbailable, imprescriptible crime subject no longer to detention but to reclusion. Law No. 7716, defining crimes resulting from racial or colour prejudice, passed in 1989, was inspired by this new concept. In consonance with Law No. 1390/51, Law No. 7716/89 also classifies the refusal of access to any public or private establishment as a practice of racism. It adds that those practising, inducing or abetting discrimination or prejudice regarding race, colour, religion, ethnic or national origin, through means of mass communication or any kind of publication, shall be punished with imprisonment ranging from two to five years. It should be stressed that whereas in Law No. 1390/51 the maximum penalty was one year's imprisonment and/or a fine, in Law No. 7716/89 the minimum sentence is one year and the maximum five years; moreover, the punishment may not be converted into a fine. Further comments are made throughout this report regarding Law No. 7716/89, the full text of which is contained in the annex.

State constitutions

18. Considering that the Brazilian State is a politically decentralized federation of states, the Federal Constitution confers on the states in the federation the capacity for self-organization. This means that each state is empowered to elaborate its own constitution, in due observance of the principles of the Federal Constitution. In this context, the state constitutions (there are a total of 26 states in Brazil) form a considerable body of law and may be important instruments for combating discrimination. A survey of the texts of the state constitutions reveals the states' concern to punish racial discrimination by the following means:

(a) Imposition of administrative, economic and financial sanctions on those committing any kind of discrimination, apart from the criminal sanctions imposed - constitutions of the States of Espírito Santo (art. 3, sole paragraph), Santa Catarina (art. 4, IV) and Rio de Janeiro (art. 9);

(b) Prohibition of discrimination in the field of education, there being assurances of: (i) the right of access and permanence in school for any individual, it being forbidden to make distinctions on grounds of origin, race or social class; (ii) the elimination from the content of teaching materials of all discriminatory allusions to Negroes, women and Indians, so as to ensure that teaching is rid of all forms of prejudice - constitutions of the States of Goiás (art. 156, VIII), Rondônia (art. 191, III), São Paulo (art. 237, VII), Pará (art. 273, I) and Paraná (art. 178, I);

(c) Determination that no one shall be the object of discrimination, prejudice or privilege on grounds of race, colour, sex, marital status, type of labour, birth, age, religion, sexual preferences, political or philosophical convictions, physical or mental disability or any other peculiarity or circumstance - constitutions of the States of Rio de Janeiro (art. 9), Mato Grosso (art. 10, III), Sergipe (art. 3, II), Rio Grande do Norte (art. 6) and the Organic Law of the Federal District (art. 2);

(d) Prohibition of public bidding as well as cultural and sporting exchanges in which countries that maintain official racial discrimination policies participate - constitution of the State of Bahia (art. 287);

(e) Compulsory inclusion of a black person in any state publicity campaign presenting more than two people - constitution of the State of Bahia (art. 289);

(f) Inclusion in the syllabuses of the state education network, and training and refresher courses for civilian and military public employees of subjects that give due attention to the contribution of Negroes in the historical formation of Brazilian society - constitution of the State of Bahia (art. 288);

(g) Reproduction of precepts in the Federal Constitution determining that the fundamental purpose of the State is to promote the well-being of all, without any kind of discrimination and prejudice, it being forbidden to make distinctions between or establish preferences among Brazilians - constitutions of the States of Alagoas (art. 2), Amazonas (art. 19, III), Minas Gerais (art. 5), Piauí (art. 3) and Rio Grande do Sul (art. 1);

(h) Adoption of compensatory measures designed to overcome actual inequalities, establishing an official preference for persons suffering discrimination, so as to guarantee their participation in and access to the labour market, education, health and other social services to which they are entitled - constitution of the State of Pará (art. 336).

19. Finally, it should be pointed out that by adding to the legal apparatus for combating discrimination, the state constitutions function as relevant additional instruments for ensuring protection of the right to equality.

Statistics and relevant information on the composition of Brazil's population

20. Demography. According to the 1990 census, Brazil has a total population of 147,305,524. Whites are a majority, accounting for 55.3 per cent of the total population, followed by mulattoes or coloureds (39.3 per cent), Negroes (4.9 per cent) and Asians (0.5 per cent). It is estimated that the total Indian population stands at no more than 250,000. From 1940 to the present day one can observe a relative decline in the number of whites and Negroes and a relative increase in the number of mulattoes. The Asian population has remained steady at about 0.5 per cent since 1940.

Table 1. Percentage distribution of the population by colour - 1940 to 1990

Decade	Colour (%)		
	Whites	Blacks	Coloureds
1940s	64	15	21
1950s	62	11	27
1960s	61	9	30
1980s	55	6	39
1990s	55.3	4.9	39.3

Source: IBGE (Brazilian Geography and Statistics Institute) demographic censuses for 1940, 1950, 1960, 1980 and 1990.

21. There are a variety of causes for the relative increase in the population of coloureds with respect to that of both whites and blacks. Major factors include white immigration, differing mortality rates, age at marriage, fertility rates and percentage of celibates among these three population groups. The main cause of the increase, however, is increased miscegenation resulting from interracial marriage. In 1980, 33 per cent of black women were married to white or coloured men. At the same time, 22.9 per cent of coloured women were married to whites or blacks, while 15.3 per cent of white women had coloured or black husbands. Interracial marriage is more frequent between whites and coloureds and between blacks and coloureds, there being fewer marriages between blacks and whites. Ten years later, according to the census of 1990, around 40 per cent of black women were married to men of other racial groups, the same being true for 26.32 per cent of coloured women and 13.4 per cent of white women.

22. Distribution. The distribution of the main racial groups in Brazilian territory is unequal. The white population is mostly concentrated in the more developed south and south-east regions of the country. The black population is distributed fairly evenly throughout the country, while coloureds are concentrated mainly in the impoverished north-east region. The Brazilian north-east, blighted by the worst economic and social conditions in the country, concentrates 48 per cent of coloureds and 31 per cent of blacks, but only 15 per cent of whites. This distribution has implications when one is analysing the social and economic indicators for the different racial groups, since what one readily puts down to colour may well be partly the result of differential location of the various racial groups. In terms of the location of their dwellings, whites live predominantly in urban areas, whereas coloureds are relatively more concentrated in rural areas, particularly in the north-east. It is important to bear this distribution in mind when analysing disparities between these groups when it comes to education and income, since the fact of living in urban or rural areas or in more or less developed regions of the country has an equally strong influence on the level of education and income, regardless of colour or race.

Table 2. Resident population by region, according to sex and colour - 1990

Sex and colour	Major regions					
	Brazil a/	North b/	North-east	South-east	South	Center-West
Total	147 305 524	5 034 403	43 094 708	65 883 203	22 899 688	10 393 522
White	81 407 395	1 379 549	12 650 781	43 494 588	18 957 105	4 925 372
Black	7 264 317	76 232	2 282 889	3 879 491	697 547	328 158
Coloured	57 821 981	3 572 494	28 149 053	17 876 768	3 110 206	5 113 460
Asian	811 181	6 128	11 985	631 706	134 830	26 532
Not declared	650	-	-	650	-	-
Men	72 372 248	2 455 684	21 129 984	32 247 718	11 381 728	2 581 432
White	39 472 363	643 959	5 922 071	21 138 442	9 383 161	2 384 730
Black	3 598 643	40 116	1 147 727	1 899 841	333 704	177 255
Coloured	28 902 375	1 767 844	14 054 232	8 903 996	1 594 871	2 581 432
Asian	398 217	3 765	5 954	304 789	69 992	13 717
Not declared	650	-	-	650	-	-
Women	74 933 276	2 578 719	21 964 724	33 635 485	11 517 960	5 236 388
White	41 935 032	735 590	6 728 710	22 356 146	9 573 944	2 540 642
Black	3 665 674	36 116	1 135 162	1 979 650	363 843	150 903
Coloured	28 919 606	1 804 650	14 094 821	8 972 772	1 515 335	2 532 028
Asian	412 964	2 363	6 031	326 917	64 838	12 815
Not declared	-	-	-	-	-	-

Source: Brazilian Geography and Statistics Institute (IBGE), Research Directorate, Employment and Incomes Department, National Home Sampling Survey.

a/ Excluding the population of the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

b/ Excluding the population of the State of Tocantins and of the rural zones of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

Table 3. Distribution of resident population (%) by region, according to domicile and colour - 1990

Domicile and colour	Major regions					
	Brazil a/	North b/	North-east	South-east	South	Center-West
Total	100.0	100.0	100.0	100.0	100.0	100.0
White	55.3	-	29.4	66.0	82.8	47.4
Black	4.9	-	5.3	5.9	3.0	3.2
Coloured	39.3	-	65.3	27.1	13.6	49.2
Asian	0.5	-	0.0	1.0	0.6	0.2
Not declared	-	-	-	-	-	-
Urban	100.0	100.0	100.0	100.0	100.0	100.0
White	55.3	-	29.4	66.0	82.8	47.4
Black	4.9	-	5.3	5.9	3.0	3.2
Coloured	39.3	-	65.3	27.1	13.6	49.2
Asian	0.5	-	0.0	1.0	0.6	0.2
Not declared	-	-	-	-	-	-
Rural c/	100.0	100.0	100.0	100.0	100.0	100.0
White	46.0	-	26.3	58.5	82.5	40.6
Black	5.0	-	5.4	6.5	2.3	4.7
Coloured	48.5	-	68.3	34.5	14.8	54.6
Asian	0.2	-	0.0	0.6	0.4	0.1
Not declared	-	-	-	-	-	-

Source: Brazilian Geography and Statistics Institute (IBGE), Research Directorate, Employment and Incomes Department, National Home Sampling Survey.

a/ Excluding the population of the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

b/ Excluding data for the State of Tocantins.

c/ Excluding data for the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

Table 4. Percentage of children aged 5 to 14 attending school, by region, according to age group and colour - 1990

Age and colour	Major regions					
	Brazil a/	North b/	North-east	South-east	South	Center-West
5-6 years c/	48.4	57.0	49.3	51.4	38.5	44.6
White	52.7	67.3	55.4	57.4	40.6	52.1
Black	40.3	93.5	40.5	42.7	31.7	25.2
Coloured	44.1	52.8	47.2	40.7	26.7	39.0
7-9 years c/	85.1	87.3	74.7	91.3	91.1	84.5
White	91.4	90.9	82.0	94.4	92.4	89.6
Black	74.6	74.8	63.8	80.7	87.2	69.9
Coloured	78.8	86.2	72.6	86.9	83.9	81.1
10-14 years c/	84.2	89.1	78.8	87.7	84.1	86.3
White	87.9	90.0	83.7	89.7	86.5	89.7
Black	77.6	73.2	71.0	81.9	80.6	74.2
Coloured	80.6	89.2	77.6	84.5	72.9	84.0

Source: Brazilian Geography and Statistics Institute (IBGE), Research Directorate, Employment and Incomes Department, National Home Sampling Survey.

a/ Excluding data for the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

b/ Excluding data for the State of Tocantins and the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

c/ Including data for children of Asian stock and those whose colour was not declared.

23. Level of Schooling. Surveying the population as a whole, one can observe that white children systematically receive more schooling than coloured children who, in turn, get more schooling than black children. This pattern is repeated in the different age groups. Analysing the data region by region, the same phenomenon is observable throughout the country with the exception of the south-east region - where the level of schooling among black children aged 5 to 6 years old is higher than that for coloured children in the same age bracket - and the south. The pattern in the States of the southern region is different from that encountered in other regions: white children still have the highest level of schooling but black children receive more schooling than coloured children in all age groups. The level of income among these different groups reflects this educational pattern, as can be seen from table 5.

24. At the lower levels of the education system, it can be observed that white children are proportionally under-represented until about the fifth year of schooling, considering that they account for 55.3 per cent of the population and that the percentage participation of white children at this level is always less than the percentage participation of the population to which they belong. From this point onwards in the system, whites are clearly over-represented, especially in higher education, where they occupy no less than 78.6 per cent of the places on offer. Individuals of Asian stock are likewise over-represented at higher levels of education, managing to obtain 2.6 per cent of all the places at universities although they belong to a racial group representing a mere 0.5 per cent of Brazil's total population.

25. An inverse pattern applies to coloured children. Though coloureds account for only 39.3 per cent of the total population, they occupy a proportionally larger number of places in the educational system up to fifth grade. From there on their relative participation drops continually to reach only 17.4 per cent of those enrolled in higher education. Blacks, meanwhile, who represent approximately 4.9 per cent of Brazil's overall population, are under-represented at all levels in the education system, particularly so in higher education, where they account for a meagre 1.4 per cent of all enrolments.

26. Considering black and coloured children together, we may observe that they account for higher levels of exclusion or failures at school than white children: while 59.4 per cent of black and coloured children who attend the first year of schooling succeed, this figure rises to 71.4 per cent among white children. The existing studies also demonstrate that the set of black and coloured children not only tends to fail more frequently than white children, but also to quit school at an early stage. In other words, their schooling backgrounds appear to be more erratic owing to the levels of failures and abandonments, a fact that becomes more outstanding as a consequence of their higher levels of abandonment and return.

Table 5. Proportion of schoolchildren and students aged 5 or more, by colour and grade

Grade	Colour (%)				
	Total	White	Black	Coloured	Asian/Undeclared
Brazil a/ b/	37 613 473	54.4	4.2	40.8	0.6
Pre-school b/ c/	3 947 772	50.8	3.7	45.0	0.4
Primary b/	28 234 039	52.0	4.5	43.1	0.4
1st grade b/	6 227 292	44.1	4.7	51.0	0.2
2nd grade b/	4 880 255	49.8	4.8	45.0	0.3
3rd grade b/	4 121 535	51.4	4.7	43.5	0.3
4th grade b/	3 514 333	53.2	4.3	42.1	0.4
5th grade b/	3 241 996	55.5	4.5	39.6	0.3
6th grade b/	2 461 760	57.3	4.5	37.9	0.4
7th grade b/	1 970 937	61.4	3.5	34.4	0.7
8th grade b/	1 780 339	61.4	4.0	34.0	0.7
Secondary b/	3 760 935	65.3	3.3	30.1	1.3
University b/ d/	1 665 982	78.6	1.4	17.4	2.6

Source: Brazilian Geography and Statistics Institute-IBGE, Research Directorate, Statistics and Social Indicators Department, National Home Sampling Survey.

N.B. Occasional discrepancies between the sum of fractions and totals presented are due to numbers being rounded up or down.

a/ Including students attending literacy courses for adults, and those who did not declare the grade or level they were enrolled in.

b/ Excluding schoolchildren and students in the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

c/ Including children aged 7, 8 and 9 years attending pre-school.

d/ Including Masters and Doctoral programmes.

27. It should be stressed that, although discrepancies do persist between the educational standards of different racial groups (especially at higher levels in the education system), there is a tendency for such inequalities to diminish gradually in both absolute and relative terms. Thus, the number of white illiterates dropped from 47.3 per cent in 1950 to 24.9 per cent in 1980 and 12.1 per cent in 1990. Among the black population, illiteracy fell from 76.4 per cent in 1950 to 47.6 per cent in 1980, dropping to 30.1 per cent in 1990. The number of coloured illiterates, on the other hand, which stood at 73.2 per cent in 1950, was reduced to 48 per cent in 1980 and diminished further in the following decade to 29.3 per cent. The difference in the level of illiteracy between whites and blacks, which was 29 per cent in 1950, shrank to 22.7 per cent in 1980 and was further reduced to 18.2 per cent in 1990. Reducing these discrepancies in educational standards is a slow, complex process. Such inequalities are likely to persist for many years before being entirely eradicated. Until this comes about, they will continue to act as a barrier (not a legal but a social hurdle) hindering the social mobility of Brazil's non-white population.

28. Mortality. Since the standard of living of the black and coloured population is lower than that of Brazil's whites, infant and adult mortality are naturally greater among these two segments. With the passage of time, these differences are becoming less acute. In 1950, life expectancy among whites was 47.5 years - 7.5 years more than the life expectancy of non-whites. By 1980, this expectancy had been extended by 18.6 years among whites and by 19.4 years among non-whites. There was thus both a relative reduction in the gap and a considerable increase in the absolute life expectancy of all racial groups.

Table 6. Average life expectancy by colour, 1950-1980

Year	Whites	Non-whites
1950	47.5	40.0
1980	66.1	59.4

Source: "Demografia da Desigualdade", Novos Estudos, CEBRAP No. 21.

29. Although it was higher among coloureds and blacks in 1980, infant mortality has dropped sharply among all racial groups since 1960, more notably among coloureds (-46 per 1,000) and blacks (-38 per 1,000) than among whites (-28 per 1,000).

Table 7. Infant mortality per 1,000 live-born children, by colour, 1960-1980

Year	White	Coloured	Black	Total
1960	105	151	140	122
1980	77	105	102	89
Difference	-28	-46	-38	-33

Source: "Demografia da Desigualdade", Novos Estudos, CEBRAP No. 21.

30. These social indicators reflect an improvement in absolute terms in the standard of living of the entire population in recent decades and a relative reduction in the disparities between different racial groups, despite the fact that the situation of whites remains better than that of non-whites.

31. Occupation and income. Legal guarantees of equal treatment before the law have so far proved insufficient to ensure greater equality of income among the different racial groups. Generally speaking, according to data from the 1990 census, 58 per cent of Brazilian workers legally hired were white and 41 per cent were black or coloured. Moreover, the nominal average income of whites is much higher than that of other groups; the income of coloureds, meanwhile, is slightly higher than that of blacks. The same pattern emerges when one analyses the income of racial groups by sex, further aggravated by the fact that women invariably earn less than men.

32. In Brazil as a whole, 47 per cent of those engaged in economic activities with regular monthly income earn the equivalent of one minimum wage or less. When this figure is broken down by colour, the percentages diminish to 38.1 per cent among whites and increase to 60 per cent among the black population. 2/ Thus, from the point of view of income, there is a clear pyramid, white men being situated at the top and black women at the bottom. The average nominal earnings of Brazilian workers aged 10 years or more were 29,956 in 1990. Whites earned roughly 29 per cent above this figure while blacks earned only 53 per cent of this average income.

33. Difficulties faced by non-white children begin with their early engagement in the labour market. According to research, while 14.9 per cent of 10 to 14-year-old white children are engaged in the labour market, black and coloured children account for a percentage 50 per cent higher: 20.56 per cent.

34. By dividing the per capita income of the different racial groups for 1989 into five income brackets, one can see that blacks and coloureds are more than proportionally represented in the lower two fifths whereas whites and Asians predominate in the upper two income brackets.

Table 8. Per capita income, 1989 (fifths)

Group	Bracket					
	1	2	3	4	5	Total
Blacks	6.3	6.8	5.9	4.1	2.1	5.0
Coloureds	60.1	48.0	38.5	29.0	17.6	38.6
Whites	33.6	45.1	55.3	66.3	78.7	55.8
Asians	0.00	0.1	0.2	0.6	1.6	0.5

Source: Cepal.

35. It is worth stressing that, although inequalities continue to exist, differences in income between these groups have been diminishing in recent decades, as have social and educational disparities. In 1976, the nominal average income of blacks was equivalent to 34 per cent of the average income of whites. By 1990 this figure had risen to 41 per cent. In other words, in a span of 14 years relative differences between whites and blacks diminished 7 per cent, or 0.5 per cent a year. In 1976, coloureds earned 45 per cent of the average income of whites, this percentage rising to 47 per cent in 1990. The income gap between coloureds and blacks also closed from 1976 to 1990: blacks previously earned 74 per cent on average of the income of coloureds and more recently were earning 86 per cent, the income gap between the two groups closing 12 percentage points at a rate of 0.86 per cent per annum.

36. The disparities in income between the different racial groups in Brazil do not necessarily mean that they earn differently for the same kind of work or job but rather that job opportunities vary from one group to another. In most cases, coloureds and blacks are employed in jobs lower down the social and income ladder; consequently they earn less. Non-manual labour is traditionally better paid than manual labour: while 21 per cent of the white workforce are employed in "non-manual" occupations, only a scant 9.9 per cent of blacks are employed in this sector of the labour market. Roughly 20 per cent of the regular black workforce are engaged in domestic activities, compared with 8.9 per cent of whites and 11.8 per cent of coloureds.

37. Blacks are concentrated in lower-income professions and are employed in lower posts or ranks of these professions in comparison with white workers. This is one of the factors explaining this group's lower income.

Table 9. Percentage distribution of workers by socio-occupational categories, by colour

Socio-occupational categories	Black and coloured	White
Non-manual occupations	2.7	10.3
Graduated workers, entrepreneurs and businessmen, middle-level personnel and office personnel	8.4	18.4
Manual and urban occupations		
Employees	35.7	36.5
Autonomous workers	11.7	11.2
Domestic servants	7.7	4.8
Rural and manual occupations	33.8	18.9

Source: Demographic Census; Brazilian Geography and Statistics Institute (IBGE), Employment and Income Department, Social Indicators, 25 per cent sample; metropolitan regions, urban agglomerations and cities with more than 100,000 inhabitants, 1988, p. 51.

38. Most of the families facing the worst living conditions are headed by black or coloured women (49.8 per cent) while only 17.28 per cent of such families are headed by white men. Families headed by black and coloured women account for the highest percentage of children 10-17 years old who neither study nor work. These families are twice as likely to live in slums compared with any other family group, including that headed by black and coloured men. Furthermore, 82.6 per cent of those families depend exclusively on social security for their medical care. Concerning women, IBGE points out that in 1980 the sum of white women who earned more than five minimum wages monthly was eight times higher than the sum of black and coloured women. In fact, 97 per cent of black and coloured women earn up to two minimum wages monthly; 16.5 per cent of these earn up to a quarter of a minimum wage monthly and 48.3 per cent up to half of a minimum wage monthly.

39. Obviously, being engaged in less prestigious occupations was determined by the black population's socio-historical plight, the result of an unequal standing of whites and non-whites from the outset - a feature that must be corrected.

40. It should be pointed out that cases of different pay for the same work, outlawed by the Constitution owing to their clearly discriminatory nature, are difficult to establish, few cases being fully proven. Income disparities are mainly due to inequalities between racial groups in the framework of the job market.

Table 10. Percentage distribution of all workers, by sectors of urban activities and colour

Sectors of urban activities	Black and coloured	White
Industry	24.1	26.8
Civil building	14.4	8.5
Trade	12.1	14.4
Services	27.3	21.5
Transport and telecommunications	6.0	6.2
Non-agricultural activities	16.1	22.6

Source: Demographic Census - Brazilian Geography and Statistics Institute (IBGE) - 1980 - 25 per cent sample - Social Indicators - metropolitan regions, urban agglomerations and cities with more than 100,000 inhabitants, 1988, p. 47.

Table 11. Percentage distribution of all workers, by sectors of main economic activity and colour, São Paulo metropolitan region

Sector of activity	Black and coloured	White
Industry	33.0	34.2
Civil building	6.0	3.5
Trade	12.2	14.9
Services	35.1	41.3
Domestic services	12.4	5.3
Others	0.6	0.6
Not declared	0.6	0.2

Source: SEP - Convention SEADE/DIEESE/UNICAMP - December 1987.

Table 12. Nominal average income of all employed workers aged 10 years or more, by major region, sex and colour (1990)

Sex and colour	Major regions					
	Brazil a/	North b/	North-east	South-east	South	Centre-west
Total c/	24 956	31 133	13 601	30 976	23 753	29 332
White	32 212	42 665	20 813	37 191	25 636	39 038
Black	13 295	19 246	8 751	15 067	15 591	14 584
Coloured	15 308	27 041	10 921	18 391	12 746	20 882
Men c/	29 388	35 906	15 788	36 741	28 870	33 102
White	38 254	49 164	24 197	44 073	31 245	44 861
Black	15 579	21 783	10 017	17 962	18 986	16 446
Coloured	17 817	31 426	12 798	21 625	15 439	23 301
Women c/	16 924	22 905	9 453	20 830	14 737	21 731
White	21 508	32 545	14 873	24 878	15 890	28 209
Black	9 682	15 308	6 467	10 830	10 825	10 196
Coloured	10 498	19 170	7 219	12 608	7 359	15 674

Source: Brazilian Geography and Statistics Institute (IBGE), Research directorate, Employment and Incomes Department, National Home Sampling Survey.

a/ Excluding the income of people in the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

b/ Excluding the income of the population of the State of Tocantins and of the rural zones of the States of Rondônia, Acre, Amazonas, Roraima, Pará and Amapá.

c/ Including the income of Asians and those whose colour was not declared.

41. Differences in the educational level, family structure and geographic location of the different racial groups often aggravate income disparities. Thus, the fact that the average income of the coloured population is much lower than that of whites is due not so much to the colour of their skin as to the fact that coloureds live overwhelmingly in the poorest regions of the country and there predominantly in the rural zone, where incomes are traditionally lower.

42. The education variable is likewise intimately associated with income. Income and level of schooling follow the same pattern, that is, whites first, followed by coloureds and blacks. Nevertheless, not surprisingly, precisely in the south of Brazil, where blacks have a higher level of schooling than coloureds, blacks earn more than coloureds. Put another way, this means that the fact that blacks earn less is partly due not to their colour but to their lower level of education. The more schooling they have the more they earn, though it should be stated that educational qualification provides unequal returns for whites and blacks engaged in the labour market.

Table 13. Real average income per hour (Cz$) by level of schooling, by colour, São Paulo metropolitan region

Level of schooling	Black and coloured	White
Total	59	102
Illiterate	40	41
No schooling	50	50
1st grade incomplete	32	67
1st grade complete	68	94
2nd grade incomplete	69	90
2nd grade complete	111	145
3rd grade incomplete	129	178
3rd grade complete	230	295

Source: SEP - Convention SEADE/DIEESE/UNICAMP - December 1987.

43. Whites similarly earn more because, regardless of the colour of their skin, they are proportionally concentrated in the richest, most urban areas of the country and receive most schooling.

44. Despite the influence of other variables (education, family structure, geographical location), it is undeniable that the colour of a person's skin strongly determines his or her job and income opportunities. Moreover, the situation of coloureds and blacks in Brazil is patently disadvantageous when compared to the standing of whites.

Table 14. Percentage of people aged 10 or more, by annual average income and colour

Income	Black and coloured	White
Up to 1 minimum wage	26	16
From 1 to 5 minimum wages	23	29
From 5 to 10 minimum wages	2	5
More than 10 minimum wages	1	4
Without regular income	48	46

Source: SEP - Convention SEADE/DIEESE/UNICAMP - December 1987.

Table 15. Real average income per hour (Cz$) of workers, by sector of economic activity of the main occupation and colour, São Paulo metropolitan region

Sector	Black and coloured	White
Total	59	102
Industry	64	108
Civil building	58	91
Trade	58	93
Services	65	112
Domestic services	31	31
Others	31	76

Source: SEP - Convention SEADE/DIEESE/UNICAMP - December 1987.

45. Statistics reveal a correlation between colour and social stratification in Brazil, and that there is inequality which weighs against non-whites. The black and coloured segments are disproportionately concentrated in lower income brackets. Although there are no legal impediments, few Negroes reach the top ranks of government careers or the armed forces. Similarly, few rise to the top in private enterprise. It is hard to gauge to what extent this is the result of racial prejudice or to differences in social status, income and education between whites and non-whites since these features are often cumulative. In other words, it is difficult to determine how independent race is as a variable influencing ways of life. 3/

46. Reducing material inequalities between racial groups is a long-term process which the Brazilian State is committed to furthering through the adoption of non-discriminatory policies. The problem of inequality is tackled by providing preferential care for underprivileged segments of the population, which indirectly implies preferential care for the coloured and black populations concentrated in these strata. The Brazilian State considers the perpetuation of these economic and social disparities between racial groups in itself an indirect sign of discrimination which, as such, must be combated since it hinders the enjoyment of the right to equality of opportunity.

II. BRAZILIAN LEGISLATION

Article 2 of the Convention

Paragraph 1 (a) - (d)

47. The 1988 Constitution raised human dignity to the status of a pillar of the Brazilian State (art. 1, III), which set itself the following basic objectives, among others: diminishing social inequalities (art. 3, III) and promoting the common good, free from prejudices regarding origin, race, sex, colour, age or any other form of discrimination (art. 3, IV).

48. The equality of all individuals before the law is a constitutional precept inscribed in article 5, which prohibits any kind of distinction, be it on account of nationality, race, colour, sex, language, religion, opinion, wealth, birth or any other such circumstance. As to making the right to equality effective, item XLI determines that all and any discrimination attempting against fundamental rights and freedoms shall be punished by the law. Brazil's previous Constitution likewise proclaimed the equality of all before the Law without distinction as to sex, race, employment, religious creed or political convictions, ordering that racial prejudice be punished by law (1967 Constitution, art. 153, para. 1).

49. The present Constitution has taken this a step farther: item XLII of article 5 classifies racism as an unbailable, imprescriptible crime (art. 5, XLII), making a clear break with previous legal tradition which defined racism as a criminal misdemeanour, that is, a lesser offence. The legal distinction between crime and offence resides in the nature and severity of the sentences imposed in each case.

50. Still regarding the right to equality, article 19 of the Constitution forbids the Union and all federate bodies to create distinctions or establish preferences between Brazilians. This provision is all the more relevant when one considers the glaring differences in wealth between the different States in Brazil, a possible source of discrimination.

51. Special attention has been given to children and adolescents with a view to ensuring them full exercise of basic rights, it falling to the family, society and the State to preserve them from all forms of discrimination, according to the terms of article 227 of the Constitution. This constitutional provision was subsequently regulated by the Statute on Children and Adolescents, article 5 of which stipulates that no child or adolescent shall be subject to discrimination, any attempt on their fundamental rights by deed or omission being punishable by law.

52. It should be noted that any constitutional provision defining rights and fundamental guarantees is immediately applicable and is binding on both public and private bodies and institutions. This is an entirely novel phenomenon in the history of Brazilian law, introduced by article 5, paragraph 1. The 1988 Constitution has also innovated by including individual rights and guarantees in that part of the text which is not liable to reform, any deliberation on draft amendments aiming to abolish or reduce the universe of individual rights and guarantees being expressly forbidden (art. 60, para. 4, IV).

53. It may be added that there are other constitutional provisions dealing with measures against discrimination which are in the process of being regulated, as, for instance, article 242, stipulating that school curricula be redefined so as to contemplate the contribution of the different ethnic groups in the formation of the Brazilian people. Section II (on Culture) of chapter III (on Education, Culture and Sports) needs to be regulated in its articles 215 and 216. Following article 68 of the Interim Constitutional Provisions, also pending regulation, "final ownership shall be recognized for the remaining members of the ancient runaway slave communities (quilombos) who are occupying their lands and the State shall grant them the respective title deeds".

54. Besides the Constitution, a number of other laws, codes and statutes also establish the criminal nature of racial discrimination. These include:

(a) Law 1,390/51, which includes the practice of acts resulting from racial or colour prejudice among criminal offences (revoked by Law 7,716/89);

(b) Law 2,889/56, which defines the crime of genocide and punishes the total or partial destruction of any national, ethnic, racial or religious group;

(c) Law 4,117/62, which, on instituting the Brazilian Telecommunications Code, punishes the use of means of communication to promote discriminatory practices;

(d) Law 5,250/67, which regulates freedom of thought and information, prohibiting the dissemination by any means of racial discrimination;

(e) Law 6,620/78, which defines crimes against national security, including that of abetting racial hatred or discrimination;

(f) Law 7,716/89, concerning crimes resulting from racial or colour prejudice, thus regulating article 5, item XLII, of the Constitution;

(g) Law 8,072/90, defining heinous crimes, including genocide, making them unsusceptible to amnesty, grace, pardon, bail or parole;

(h) Law 8,078/90, concerning consumer protection and proscribing any advertisement that is misleading, discriminatory or encourages violence;

(i) Law 8,081/90, establishing the crimes and punishments applicable to acts of discrimination or prejudice performed by means of communication or by any kind of publication regarding race, colour, religion, ethnic or national origin;

(j) Law 8,069/90, establishing the Statute on Children and Adolescents, which determines that no child or adolescent shall be subject to any form of discrimination.

55. Supported by this normative framework, the Brazilian State commits itself to refraining from any discriminatory act or practice, while also pledging itself to discourage racial discrimination on the part of individuals, groups or organizations. The fact that this is the political and legal stance on a national scale is in itself sufficient to abrogate or annul any local regulatory provision intended to generate or perpetrate discrimination.

Paragraph 1 (c)

56. Since the 1930s, organizations whose purpose it is to defend the rights of Negroes, preserve their cultural heritage and combat discrimination against them have sprung up in Brazilian society. The first initiatives in the struggle for Afro-Brazilian rights emerged with the creation of the Brazilian Negro Front in 1931, subsequently disbanded by the Estado Novo ("New State") dictatorship in 1937. The Negro Experimental Theatre, which was in operation

from 1944 to 1968, was an important mouthpiece for the cultural expression of the Negro community in Brazil. In the academic sphere, one should mention the creation in 1972 of the Centre for Afro-Asian Studies at the Cândido Mendes University Complex in Rio de Janeiro, and in 1975 of the Institute for the Research of Negro Culture (IPCN). In 1978, still under military rule, the Unified Negro Movement (MNU) was created in São Paulo and supported in Rio de Janeiro by the Socialist Negro Nucleus and the Brazil-Africa Studies Centre, among others. In July 1978, a public act against racism was held in São Paulo as the first demonstration organized by MNU.

57. As the move to restore democracy advanced in Brazil, the problems of the black community were introduced into political parties' programmes, being given special attention by the Democratic Labour Party (PDT), the Brazilian Democratic Movement Party (PMDB), the Brazilian Communist Party (PCB) and the Workers' Party (PT). Important bodies specially devoted to Negro issues were set up within these parties and in the framework of the governments run by them. Two of these deserve special mention: the Extraordinary Secretariat for the Development and Promotion of Negro Populations (Sedepron) instituted in 1982 by the PDT government of the State of Rio de Janeiro; and the Liaison Centre for Marginalized Populations (CEAP), an NGO attached to the Workers' Party, consisting mostly of Negroes interested in combating violation of the rights of Negro populations. In 1986, within the Ministry of Culture, the Fundação Cultural dos Palmares was set up with the purpose of developing a national policy of promotion of black culture.

58. Recent episodes involving discrimination against Negroes, Jews and north-easterners have led to the creation of movements and institutions representing civil society and the State, designed to combat racial intolerance. On 19 October 1992, the Movement of Democratic Bodies against the Revival of Nazism and All Forms of Discrimination was formally launched in the auditorium of the Brazilian Bar Association (OAB) in response to a series of racially motivated incidents involving neo-Nazi gangs that had been active in recent months. Headed by OAB's Human Rights Commission, the movement brought together a variety of bodies and organizations including the Israelite Federation of the State of São Paulo, the State Council for the Participation and Development of the Black Community, S.O.S. Racism, the Força Sindical Union Federation, the National Engineers Federation, Amnesty International, the Brazilian Writers Union, the State Forum of Negro Bodies, Radio Atual, the North-eastern Traditions Centre, the Brazilian Negro Front, the Teotônio Vilela Human Rights Commission, the Catholic Church's Justice and Peace Commission, and the business community's Pensamento Nacional das Bases Empresariais (PNBE), in addition to political parties like PDT, PMDB, PSDB and PT. On the governmental side, the Movement was supported by the São Paulo Mayor's Office and the Municipal Culture Secretariat. The Movement's first public demonstration was held in November 1992. The "São Paulo of a Thousand Peoples" gathered representatives of minority groups in a central square in São Paulo and mobilized a crowd of 80,000 demonstrators. This act sought to raise awareness among the population of the city regarding the struggle against racism.

59. A similar movement, the Front against Nazi-Fascist-Racism, sprang up in Rio de Janeiro in December 1992. It consisted of a political alliance of Negro and Jewish leaders. It was launched at a ceremony in Rio de Janeiro

City Council Chamber. On 21 March 1993, International Day for the Elimination of Racial Discrimination, the Front organized a public demonstration, titled the First Meeting of Races and Cultures against Racial Discrimination, rallying approximately 30,000 people.

Paragraph 2

60. As far as special, concrete measures to be adopted by the State are concerned, the 1988 Constitution introduces special mechanisms regarding women and the handicapped, aimed at ensuring equality in the enjoyment and exercise of human rights and basic freedoms. With reference to women, the text of the Constitution establishes protection of the job market for women by means of specific incentives, according to the terms of the law. With regard to the handicapped, the Constitution states that the law shall reserve for them a percentage of public posts and jobs and define the respective selection criteria.

61. In the sphere of the Constitution, however, no allowance is made for special measures regarding racial groups. It should be stressed, though, that nothing would prevent such measures being included, should circumstances so require.

Administrative actions

62. Brazil is a Federative Republic formed by the union of 26 states, municipalities and the Federal District, all of which have administrative and political autonomy. As a result, each unit carries out its own actions to combat discrimination. The following actions deserve special emphasis.

63. In the State of São Paulo, the State Council for the Participation and Development of the Negro Community was established, attached to Secretariat of Government.

64. In the municipality of São Paulo, the biggest city (population: 9 million) in Brazil, the local government set up a Special Coordination Department for Negro Affairs in September 1989. According to IBGE statistics for the year 1988, blacks accounted for 24.6 per cent of the total population of the city of São Paulo. This fully justifies the existence of a special department for handling their specific affairs.

65. Following a series of incidents provoked by neo-nazi style groups acting against racial, regional and religious minorities beginning in October 1992, an official inquiry was set up to identify these neo-nazis and charge them with the crime of racial discrimination. A second inquiry was ordered to look into the activities of neo-nazis in São Paulo. The Federal Police was likewise designated to investigate neo-nazi activities nationwide.

66. Acknowledging incidents involving racial discrimination in the State, the State Government created a special police station for handling racial crimes, which began operating in June 1993. In view of the successful experience with the Women's Police Station, it is expected that a special unit, necessarily more sensitive to racial problems, will help raise the number of accusations

and tip-offs and provide more effective investigation. According to decree 33.696 of 23 April 1993, this station - attached to the Civil Police Social Communication Department - is entrusted with the task of handling "breaches of law resulting from discrimination or prejudice regarding race, colour, religion, ethnic or national origin".

67. A permanent eight-man commission attached to the Justice Secretariat, consisting of two representatives of the Public Security Secretariat, one representative of the Justice Secretariat and five representatives of racial organizations, has been set up to monitor the station's activities. The station itself is to be staffed by an inspector, an assistant inspector, four investigators and a clerk. The Commission's brief is to accompany investigations and submit proposals to the anti-racism police station. Despite the existence of this specialized police unit, victims of race-related crimes can register their complaints at any police station.

68. Most of the complaints filed at the Special Race-Related Crimes Station involve verbal abuse. In 1993, charges were brought in 41 cases for verbal insults and in 7 for the crime of racism. In 1994, 29 cases involved insults and 11 racism. In the rare instances in which offenders are charged with racism, it has been difficult to obtain consistent, convincing proof that discriminatory conduct actually resulted from racial or colour prejudice. The specialized station's statistics show that substantial proof is obtained in just 30 per cent of the inquiries undertaken to investigate conduct related to racial prejudice.

69. In September 1994, the State of Rio de Janeiro inaugurated its first Specialized Racial Discrimination Police Station, the task of which is to investigate crimes against honour and other offences motivated by racial or colour prejudice. In addition to the regular police officers, the station is to be manned by a public defender and staff from the Extraordinary Secretariat for the Defence and Protection of Negro Populations. The station is to be attached to the General Department of the Civil Police Secretariat's Specialized Police Force.

70. Law No. 7,716/89 defining crimes resulting from racial or colour prejudice is almost exclusively concerned with criminalizing attitudes and acts that prevent access to services, jobs and positions in both public and private establishments. It does not deal with crimes against honour - the most frequent occurrence. Offences expressing prejudice are thus legally classified and dealt with not as racism but rather as verbal insult or slander. It should be noted that whereas racism is punished with a one- to five-year jail sentence, indictment for slander leads to imprisonment for one to six months. Moreover, crimes against honour require the victim to sue whereas the public prosecution service is responsible for bringing action in cases involving the crime of racism. Furthermore, the crime of racism is imprescriptible as opposed to crimes against honour which are soon barred by statute of limitation (applicable after 2 years in cases of slander).

71. Owing to the discovery of this loophole, the reform bill for the Special Part of the Criminal Code, currently under examination in Congress, introduces a section devoted to crimes against equality which typifies offences of a discriminatory nature that attempt against a person's honour. It likewise

seeks to curb the practice of violent acts of racial discrimination, as well as the publicizing of racist ideas, participation in racist organizations or activities and discriminatory conduct. It further makes provision for increasing the sentence by one third to one half if the perpetrator is a public employee. Discrimination against Indians, their communities and culture is also punished.

72. Draft bill No. 4,366/93, tabled by Congresswoman Benedita da Silva, seeks to alter provisions in Law No. 7,716/93, which defines crimes resulting from racial or colour prejudice. The bill aims to perfect legislation on the prevention of racism, prejudice and discrimination by proposing that Law No. 7,716 combat not only racial and colour prejudice but also discrimination relating to origin, sex, age, marital status and so on. It proposes that race-related crimes be classified as unbailable and imprescriptible, pursuant to article 5, item XLII, of the Federal Constitution.

73. Legislative Proposal 486, submitted to the Chamber of Deputies, suggests that the executive branch present a bill creating the National Council for Combating Racial Discrimination. The purpose of this Council, attached to the Ministry of Justice, would be to promote national policies designed to eliminate discrimination concerning origin, race and colour.

74. Regarding the struggle against racism and prejudice in Brazil, two other bills under consideration in Congress deserve special mention. Draft resolution 43 (1991) proposes the creation of a congressional Human Rights Committee. The brief of this Human Rights Committee of the Chamber of Deputies would be to examine and produce reports on issues, proposals and cases submitted to the Committee for it to deliberate on or examine pertinent matters. Draft bill 4,338/93, meanwhile, makes the mention of a person's colour obligatory on documents and in public procedures, including birth certificates, educational and medical records, police and penitentiary files. This Bill also aims to quantify and specify the state of Brazil's Negro population, thus contributing to raising awareness of the role of Negroes in society.

75. Within the federal Government, the Conselho do Programa Comunidade Solidária - a council that comprises representativas of the civil society and is expected to provide guidance on the actions undertaken by the Government in the social field - had among its attributions the definition of non-discriminatory policies. In the framework of the Ministry of Justice, a proposal for the establishment of a National Commission For Equality of Opportunities is being considered. The Commission is expected to identify discriminatory situations and to propose non-discriminatory laws and policies. Among the fundamental procedures to control discriminatory practices, is the inclusion of colour-based data in the information systems of the Government. The analysis made thereof may serve as a basis to propose legislation preventing different manifestations of discriminatory practices. At last the need is recognized whenever necessary, to adapt governmental policies to the provisions of international conventions to Brazil is a signatory in order to strengthen their implementation.

Article 3 of the Convention

76. In its international relations, the Brazilian State is guided, inter alia, by the principle of repudiation of racism. It has thus expressly condemned the practice of apartheid, in force in South Africa until a short time ago. While it persisted in that country, the Brazilian Government looked upon apartheid as an odious practice, openly conflicting in its essence with the values and sentiments most dear to the people of Brazil. Consistent with its critical stance towards apartheid and the policy of external aggression adopted by the South African Government at that time, the Brazilian Government issued Decree No. 91,524 of 9 August 1985, barring cultural, artistic and sporting exchanges and banning the sale of oil and arms to South Africa, pursuant to resolution 566/1985 adopted by the United Nations Security Council. 4/

77. In the 1960s, when the International Convention on the Elimination of All Forms of Racial Discrimination was drafted, apartheid was in full sway and thus warranted special attention from the international community. The subsequent eradication of apartheid was partly due to the effective embargoes and sanctions imposed by the international community. In the 1990s, racism has taken on a number of new guises such as new modalities of xenophobia and ethnic violence. The international community is attentive to the development of these novel phenomena. The Paris Charter, a document drawn up at the end of the Conference on Security and Cooperation in Europe in November 1990, declares: "We express our determination to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against any person persecuted on religious or ideological grounds."

78. In 1993, the emergence of new forms of racial discrimination was also discussed at the regional preparatory meetings in Africa, Latin America and the Caribbean leading up to the World Conference on Human Rights held in Vienna. The final declaration of the Latin American and Caribbean regional meeting held in San José in January 1993, stated that "measures must be taken to prevent the rise in other parts of the world of new trends of systematic, flagrant human rights violations, which have arisen in some countries, such as disturbing manifestations of intolerance, all forms of racial discrimination, xenophobia, neo-nazism and ethnic cleansing". (para. 11).

79. Also in 1993 at its forty-ninth session the United Nations Commission on Human Rights presented a plan of action for the Third Decade to Combat Racism and Racial Discrimination (res. 1993/11) and decided to appoint a special rapporteur to investigate contemporary forms of racism, racial discrimination, xenophobia and intolerance (res. 1993/20).

80. It should be pointed out that the broad definition of racial discrimination contained in the Convention encompasses such discriminatory practices. This makes it a strategic instrument for action against neo-nazism, xenophobia and ethnic violence.

Article 4 of the Convention

Subparagraph (a)

81. The dissemination of discriminatory ideas is forbidden by Brazil's legal framework, in a number of specific laws, like those regulating the workings of the press, of communications and consumer defence against misleading advertisement. Law No. 2,889 (1956) defining the crime of genocide punishes those who publicly and directly encourage any form of genocide (art. 3), the sentence being increased when such abetting is committed by the press. The Brazilian Communications Code (Law No. 4,117 of 1962), on the other hand, classifies the promotion of campaigns that discriminate against class, colour, race or religion as abuse in the exercise of freedom of broadcasting (art. 53). Article 14 of the Press Law (Law No. 5,250/67) prohibits propaganda of racial or class discrimination, imposing penalties ranging from one to four years of imprisonment. In 1989, Law No. 7,716 defined crimes resulting from racial or colour prejudice. Article 20 of this law establishes punishment of two to five years imprisonment for the crime of practising, inducing or abetting discrimination or prejudice regarding race, colour, religion, ethnic or national origin by using means of mass communication or any form of publication. Moreover, Law No. 8,078/90 (the Consumer Protection Code), in making provisions for the protection of consumers, expressly prohibits any kind of discriminatory publicity, an offence punished with a prison sentence ranging from three months to two years, in addition to a fine.

Subparagraph (b)

82. The text of the Constitution ensures ample freedom of association, provided it is for lawful purposes (art. 5, XVII). Given that racism is classified as a crime by the Constitution, it stands to reason that associations of a discriminatory nature are barred by implication.

83. As far as the organization of political parties is concerned, the Brazilian Constitution guarantees freedom to create party associations but at the same time requires that individual human rights, including the right to equality, be safeguarded.

Subparagraph (c)

84. The Brazilian legal system repudiates discriminatory practices, all the more so when public authorities or institutions are agents of the same; so much so that the Criminal Code devotes an entire chapter to crimes committed by civil servants against the Administration in general.

85. With particular reference to racism, Law No. 7,716/89 stipulates that civil servants shall forfeit their public post or office as a corollary effect of conviction. Furthermore, Law No. 2,289/56 considers the commission of genocide by a public authority or employee as an aggravating circumstance.

Article 5 of the Convention

Subparagraph (a)

86. Article 5 of the 1988 Constitution states that all are equal before the law and shall be treated without any manner of distinction when standing before a court or any other tribunal. It establishes the principle of competent court, according to which no one shall be tried or convicted other than by the competent judicial authority. The equal standing of the parties in all judicial proceedings is secured, among other mechanisms, by the adversary system and the right to ample defence, with all the means and resources pertaining thereto (art. 5, LV). Full legal assistance free of charge is a basic right which the State must provide to those of proven insufficient means (art. 5, LXXIV). Along the same lines, the Code of Criminal Procedure stipulates that no one shall be charged or tried without provision of a defence attorney (art. 261). The comments on Article 6 of the Convention describe in greater detail these and other instruments available in the Brazilian legal system to ensure effective equality before the courts.

Subparagraph (b)

87. The text of the Constitution guarantees inviolability of the right to life and security (art. 5, caption). The death penalty is proscribed save in case of declared war.

88. In order to ensure individuals protection against violence or bodily harm, the Criminal Code devotes an entire section to crimes against individual persons. These include homicide and assault and battery both in the involuntary form and when performed with malice aforethought (arts. 121 and 129).

89. Besides the traditional protection individuals are afforded against all forms of physical violence, Brazilian legislation has sought to extend protection to specific ethnic, racial and religious communities. Thus, Law No. 2,889 (1 October 1956), which defines the crime of genocide, punishes those who, in attempting completely or partially to destroy a national, ethnic, racial or religious group, kill members of the group, cause serious damage to the physical or mental integrity of members of the group, intentionally subject the group to conditions capable of bringing about its total or partial physical destruction, or act to prevent births within the group or to force children from the group to be transferred to another group. The sentence shall be increased when the crime is committed by a public authority or employee. Moreover, the crimes defined in this law may not be considered political crimes for the purposes of extradition.

90. Protection against genocide is also afforded by the Military Penal Code (Decree Law No. 1,001 of 21 October 1969), article 208 of which defines the crime of genocide as "killing members of a national, ethnic, religious or racial group with a view to bringing about its total or partial destruction". Those convicted of this crime are liable to be sentenced to 15 to 30 years of imprisonment.

91. Finally, Law No. 8,072 of 25 July 1990 (makes provisions regarding heinous crimes, pursuant to the terms of art. 5, item XLII, of the Federal Constitution, and makes other provisions) defines genocide as a heinous crime, be it merely attempted or actually consummated. This means that those convicted of genocide are no longer liable to amnesty, grace or pardon and that bail and parole are not available.

Subparagraph (c)

92. According to the Constitution, Brazil is a "Democratic State under the rule of Law" (art. 1) organized as a Federative Republic consisting of municipalities, member States and the Federal District. The constituent units of the federation are constitutionally ascribed autonomy, the Union being exclusively competent to represent the nation's sovereignty in the international arena. The democratic regime is based on the principle that all power issues from the people, who exercise it through elected representatives or directly by means of plebiscites, referenda or legislative initiatives by non-members of Congress. It is likewise governed by the principles of universal suffrage, sovereignty, citizenship and political pluralism.

93. According to the terms of article 14 of the present Constitution, the people's sovereignty shall be exercised by universal suffrage and by direct, secret ballot. A novelty of the 1988 Constitution is that it inscribes secret, direct, universal, periodical voting in that part of the text not subject to subsequent review. In other words, this political right may not be removed from the text of the Constitution in the future.

94. Other than at elections, the people's sovereign power may be made manifest in plebiscites, referenda and legislative initiatives by non-members of Congress. This considerably broadens the scope of direct democratic expression in comparison with previous legislation.

95. Registering as voters and voting are compulsory for those over the age of 18. The illiterate, senior citizens over the age of 70 as well as those over 16 but under 18 years of age are entitled to but not obliged to vote. The 1988 Constitution extended the right to vote to the illiterate. As the majority of the illiterate were either Negroes or coloureds, there was an indirect racial bias to this exclusion: in 1988, 17 per cent of Brazil's black population were not registered voters, compared with 13 per cent of coloureds and 11 per cent of whites. With the extension of voting rights to the illiterate, this bias will tend to disappear.

96. Foreigners are not entitled to register as voters, nor are Brazilians for the duration of their military service, during which they are denominated "conscripts"; that is, they are not professional members of the armed forces but rather citizens performing a temporary duty imposed by the Constitution.

97. For a citizen to be able to stand for election certain requirements consonant with the tendency towards universality must be fulfilled. These general requirements include: being a registered voter, having an electoral domicile (i.e. being on the polling list) and being a member of a political party. Independent candidates are thus not allowed to stand for election.

98. The minimum age for candidates to the offices of President of the Republic and Vice-President is 35 years; candidates to the Federal Senate must also be at least 35 years old; the minimum age for state governors and deputy State governors and their counterparts in the Federal District is 30 years; while those standing for election as federal and state deputies, mayors and deputy mayors, and justices of the peace must be at least 21 years of age.

99. Those barred from registering as voters and the illiterate may not stand for election. To the extent that illiteracy is more widespread among the black and coloured segments of the population (see the indirect evidence for this in tables 4 and 5), the requirement that candidates for public office be literate may actually prevent equal access to these offices. However, since regular performance of the duties inherent to elective public office requires a minimal degree of qualification, this legal requirement can hardly be considered discriminatory. Those elected to executive branch offices are forbidden to stand for re-election. This prohibition applies equally to those who have replaced them in the six months prior to elections.

100. Public administration is governed by the principles of legality, impersonality, morality and openness. Access to posts in public administration, both civilian and military, is equally ensured to all Brazilians. Admission to the Civil Service is by public selection examination. Exception to this rule is made for temporary government appointment posts, appointment to and dismissal from such posts occurring at the discretion of the authority concerned.

Subparagraph (d)

101. People are free to come and go within Brazilian territory during peacetime. Any person is entitled to enter, remain in and depart the country with his or her personal belongings and property. All individuals are guaranteed the right to settle in the country, no authorization being required. This right applies not only to natural-born and naturalized Brazilians but is also extended to foreigners. Under a state of siege, however, people may be obliged to remain in a particular area.

102. Government authorization is required to enter indigenous reserves. The aim of this measure is to protect Brazilian Indians from forced acculturation.

103. Law No. 4,898 of 9 December 1965 describes any attempt against an individual's right to come and go as abuse of authority.

104. The freedom to come, go or stay put applies both to the Brazilian State's internal and external frontiers. As a nation largely formed by immigrants throughout its history, Brazil welcomes individuals of any nationality, race, creed or ethnic origin, all of whom are free to enter, settle in and depart the country. Brazilian immigration policy is designed to provide specialized labour for different sectors of the economy, the aim being to raise productivity, assimilate technology and attract resources to specific sectors.

105. Federal authorities alone may legislate on matters concerning emigration, immigration, and on the entry, extradition or expulsion of foreigners. The Constitution specifies that extradition requests shall not be granted in the

case of foreigners accused of committing crimes of a political nature or associated with personal beliefs. In other cases, extradition depends on a request being lodged by the foreigner's country of origin, the Federal Supreme Court being entrusted with the task of examining and granting or refusing each request.

106. Law No. 6,815/80 defines the legal status of foreigners in Brazil, as well as the contraventions which may involve them. Under the terms of this law, foreigners are required to obtain an entry visa, though this requirement may be waived where reciprocal arrangements exist, sealed by an international agreement. Visas are granted on an individual basis and may be extended to the holder's legal dependants. Those entering Brazilian territory without due authorization shall be subject to deportation. Foreigners intending to settle permanently in Brazil may be granted a permanent visa. Brazilian law countenances requests for political asylum.

107. The Brazilian Constitution guarantees the right to a nationality, pursuant to the provisions in article 12. Brazil adopts the jus solis criterion, with a few exceptions. Nationality is granted to those born in Brazil, even to foreign parents, provided they are not in the service of their country, in which case jus sanguinis shall apply. Other exceptions to the jus solis criterion include the case of those born abroad to Brazilian parents who at any time opt for Brazilian nationality.

108. Foreigners may apply to become naturalized Brazilians, citizens of Portuguese-speaking countries being required to be resident in Brazil for only one year without interruption and to be of good moral conduct. The executive branch has the exclusive prerogative to grant naturalization, the conditions for which are: legal (civil) capacity under the terms of Brazilian law, four years' continuous residence in Brazil, an ability to read and write Portuguese, material conditions to support oneself, and no criminal convictions, among others. There is also provision for extraordinary naturalization in the case of foreigners of any nationality who have been continuously resident in Brazil for more than 15 years without criminal conviction.

109. The Brazilian Constitution considers the family to be the cornerstone of society. The State thus affords families special protection. The family is based upon marriage but the law also provides protection as a family unit for any stable union between man and woman, the same applying to any union formed by either parent and their offspring.

110. The rights and duties pertaining to conjugal societies shall be equally enjoyed and performed by both spouses. Brazilian legislation acknowledges the right to divorce, family planning being a matter of each couple's free choice.

111. Law No. 7,716, concerning crimes resulting from racial or colour prejudice, came into force in 1989. It regulates the crime of racism established by article 5, item XLII, of the 1988 Constitution. The criminal acts described by this law include preventing or hindering by any means marriage or family or social cohabitation. The agents of such acts are liable to sentences ranging from two to four years' imprisonment.

112. The right to property is guaranteed by article 5, item XXII, of the Constitution. None the less, both urban and rural property must serve a social function. Urban property serves its social function when it fulfils the requirements set out in the master plan for the city or town - the prime instrument of the urban development and expansion policy. Non-observance of this social function may imply compulsory division of or building on the property, progressive increases in urban property taxation or even expropriation, compensation being paid in the form of government bonds. Rural property, on the other hand, is deemed to fulfil its social function when it meets certain constitutional requirements, such as rational, adequate use of the soil and environmental preservation. Non-observance of this social function likewise leads to sanctions, including expropriation with compensation being paid in the form of government bonds. Brazilian law makes no restrictions as to the purchase of property by any social group or segment.

113. The right to inheritance is guaranteed by article 5, items XXX and XXXI of the Federal Constitution. Brazilian legislation regulates the form of inheritance concerning the estate of foreigners, stipulating that Brazilian law shall prevail with regard to the property they possess in the country to the benefit of the Brazilian spouse or offspring, whenever it may prove more favourable to them than the personal law of the de cujus. Brazilian law makes no restrictions as to any social group's right to inheritance.

114. The Brazilian Constitution guarantees freedom of thought and expression (art. 5, item IV). Freedom of conscience and creed is inviolable, there being no formal link between the State and any of the churches. The latter are free to practise or perform their own cults and services, protection being ensured for the places where such services and liturgies are held.

115. No one may be deprived of his or her rights on grounds of religious belief or philosophical or political conviction. Exception is made for those who, for such reasons, seek to be exempted from legal obligations imposed on all alike and refuse to render alternative service.

116. Religious education is optional as is enrolment in teaching establishments of a religious orientation. Public and private, lay and religious teaching institutions freely coexist. The principle of pluralism of pedagogical ideas and approaches prevails in Brazil.

117. Law No. 4,898/65 classifies any attempt against freedom of conscience or belief or against the free exercise of religious cults as abuse of authority. The law likewise punishes disrespect for cults and the prevention or disturbance of acts pertaining thereunto (Criminal Code, art. 208).

118. According to the Press Law (Law No. 5,250 of 9 February 1967), one is free to express one's thoughts and opinions, provided this right is not exercised abusively. Propaganda of war, subversion of the political and social order, and encouragement of prejudices regarding race or class shall thus not be tolerated (art. 14).

119. The Brazilian Constitution guarantees freedom of expression in all its dimensions, be they artistic, scientific or connected with communication. It prohibits censorship and upholds professional secrecy. Journalistic

information is fully secured but the production and programming of radio and television broadcasting companies should show due respect for the ethical and social values of individuals and the family.

120. The right to express one's opinion is guaranteed by the Constitution and widely exercised in Brazil. Political issues and controversial subjects are routinely discussed by the mass media. Ownership of the media is divided up among a broad spectrum of private individuals and State bodies, monopolies and oligopolies being expressly forbidden. In 1988 there were 2,033 radio stations and 183 television stations broadcasting throughout Brazil.

121. The Government is responsible for granting broadcasting concessions or charters. These concessions only produce legal effects when they have been duly examined and approved by Congress.

122. Prior examination of films, plays and radio and television programmes by appropriate government departments is carried out purely for the purpose of rating them as suitable or unsuitable for particular age groups and therefore does not constitute censorship. The production and programming of radio and television broadcasters should observe certain constitutional precepts, the most important of which is respect for the ethical and social values of individuals and the family.

123. Should material or moral damage be sustained or a person's image be tarnished as a result of abusive exercise of the right to freedom of expression or opinion, the injured party shall be entitled to seek compensation in the courts.

124. The Constitution guarantees the right of assembly, provided it be for peaceful ends. Meetings open to the general public, held in buildings or in the open air, do not require prior authorization. They must, however, be peaceful and the participants must not be armed. Police authorities should be informed of such events in advance to avoid interfering with another meeting already scheduled for the same venue (art. 5, item XVI).

125. The right of assembly may be restricted in exceptional circumstances, as when a "state of defence" or "state of siege" has been declared. These are provided for by the Constitution in order to defend the State and the nation's democratic institutions. Such exceptional mechanisms are designed to preserve or promptly restore public order and social peace in determined, limited areas threatened by grave or imminent institutional instability or affected by major natural disasters, or else in the case of war or serious nationwide upheaval or commotion (Brazilian Constitution, art. 136 onwards).

126. Associations whose ends are lawful are afforded ample freedom. They can be created without authorization by any public authorities, which are legally prevented from interfering in their modus operandi. An association may only be closed down or its activities suspended by a court ruling. Members are free to join or leave an association at any time, compulsory membership being outlawed. The Constitution confirms the legal capacity of associations to represent their members in judicial or extrajudicial proceedings.

127. Party associations must observe national sovereignty, the democratic regime, party pluralism and show due respect for basic human rights.

128. The Criminal Code establishes penalties for those attempting against freedom of association (art. 199), classifying such acts as abuse of authority (Law No. 4,898/65, art. 3).

Subparagraph (e)

129. Article 6 of the Constitution includes among the social rights to which all Brazilians are entitled the right to employment and the right to social security, among others.

130. The right to employment is protected, among other means, by a guarantee against arbitrary or unjustified dismissal in labour relations. Should dismissal occur in such manner, workers are guaranteed compensation pay (art. 7, I).

131. The Constitution also determines that those involuntarily unemployed should be paid unemployment benefit (art. 7, II).

132. Wages, as in all countries whose economies are based on private enterprise and free competition, are dictated by market forces. There is, however, a minimum level below which pay may not drop. The minimum wage - valid throughout Brazilian territory - should in theory cover the basic living expenses of workers and their families, including outlays for housing, food, education, health, leisure, clothing, hygiene, transport and social security.

133. The Constitution guarantees equal rights for workers with permanent contracts and occasional labourers, proscribing any kind of discrimination regarding either group:

(a) Prohibition of differential pay, appointment to posts and admission criteria on grounds of sex, age, colour or marital status;

(b) Prohibition of any kind of discrimination regarding pay and admission criteria in the case of handicapped or disabled workers;

(c) Prohibition of distinctions between manual, technical and intellectual labour or between the respective professionals.

134. In the sphere of infra-constitutional legislation, Law No. 7,716 of 5 January 1989, which defines crimes resulting from racial or colour prejudice, makes provisions regarding the protection of labour. Under the terms of this law, preventing or hindering the access of a duly qualified person to any post in the direct or indirect administration or to commissioned posts in public service concessionaires constitutes a crime (art. 3). It is likewise criminal to deny or resist granting a person employment in private enterprise or to prevent or hinder access to service in any branch of the armed forces on grounds of race or colour.

135. The organization of trade unions is unrestricted in Brazil, interference or intervention in union activities on the part of public authorities being

expressly forbidden. Unions may be founded without authorization from the State. Once founded, however, they must be registered in the competent department.

136. As with any other organization or association, no one shall be obliged to become or remain a member of a trade union. Like other such organizations, unions have legal capacity to defend the collective or individual rights of the professional class they represent.

137. The Constitution rules that union members may not be dismissed from their employment from the moment they register as candidates to union leadership or administration posts, this prohibition on dismissal being maintained for the duration of their mandates and for one year subsequent to the end of the same, provided they do not commit serious faults (Constitution, art. 8, VIII). The workforce in companies with more than 200 employees may elect a representative for direct liaison and negotiation with the management.

138. Civil servants are ensured the right to unfettered union organization.

139. According to article 23 of the Constitution, the Union, the states, the Federal District and the municipalities share competence to promote programmes for house building, improvement of housing conditions and basic sanitation. The national agriculture policy, on the other hand, should take due account of rural workers' need for housing, among other factors (art. 187).

140. Article 6 of the Constitution lists under the social rights to which all Brazilians are entitled the right to health, to social welfare and assistance for the destitute.

141. The right to health is guaranteed to all and it is the State's duty to ensure it is provided for by social and economic policies. Universal, egalitarian access to health services is secured (Constitution, art. 196).

142. Social welfare, as defined by article 194 of the Constitution, encompasses an integrated set of actions promoted by public authorities and by society at large, the purpose of which is to guarantee rights concerning health, social security and assistance. Social welfare aims to achieve the following objectives, among others: universal coverage and care; the provision of uniform, equivalent benefits and services to both urban and rural populations; equitable participation in costing; democratic, decentralized management in which the community - workers, businessmen and retired citizens - take an active part.

143. Social security plans are to provide coverage for cases of illness, disease, invalidity, death, including employment-related accidents, old age and imprisonment; maintenance allowances for dependents of low-income workers; protection for maternity, especially pregnant mothers; protection for those facing involuntary unemployment; pensions for the spouse, companion or dependents of workers, male and female alike.

144. Article 6 of the Constitution inscribes education among the social rights to which all Brazilians are entitled. More than a universal right, education is treated as a duty of the State and family. Pursuant to article 205 of the

Brazilian Constitution, education is to be promoted and encouraged with collaboration from society as a whole, the aim being to enable individuals to develop to the full, to prepare them for full exercise of their citizenship, and qualify them for work. Education is a shared duty incumbent upon the family, society and the State and it is to be guaranteed with absolute priority to children and adolescents (art. 227).

145. Full exercise of cultural rights as well as access to sources of Brazilian culture are to be ensured by the State, which is also entrusted with the task of supporting and encouraging the appreciation and dissemination of cultural manifestations (Constitution, art. 215). All expressions of indigenous and Afro-Brazilian culture and that of other groups that have made a relevant contribution to Brazilian culture are likewise to receive protection from the State.

146. The first law to punish racial discrimination resulting from racial or colour prejudice in Brazil (Law No. 1,390 or the Afonso Arinos Law) was introduced in 1951. 5/ This law made refusal on the part of public or private establishments to serve, attend or receive any person on account of their race or colour a criminal offence. It also stipulated punishment as a criminal offence for the creation of any obstacle to obtaining employment in public or private companies for racial motives.

147. More than three decades later, Law No. 7,716 of 5 January 1989, dealing with crimes resulting from racial or colour prejudice, was published. As mentioned above, the 1988 Constitution made racism a crime as opposed to an offence. Law No. 7,716 detailed instances of racism in order to make up for shortcomings and omissions in the Afonso Arinos Law. In brief, Law No. 7,716 lists the following acts as typifying the crime of racism: preventing a person's access to or refusing to serve him or her in establishments open to the public, such as bars, restaurants, entertainment halls, social clubs, sporting establishments, hairdresser's parlours, any public building, public transport, among others. It introduces a more severe punishment to racism as it classifies it as an unbailable crime for which the penalty of imprisonment is to be applied.

Article 6 of the Convention

148. As the right to racial equality is an individual right, when violated, the offended party may seek redress through the courts. This is ensured by the principle of unrestricted access to the judiciary enshrined in the 1988 Constitution which states that "the Law shall not exempt the Judiciary from examining cases of breach of or threat to rights" (art. 5, item XXXV).

149. Two innovations concerning this principle made by the present Constitution in relation to the previous one deserve special mention. The 1988 Constitution broadens access to the judiciary inasmuch as it determines that not only actual breach of but also threat of violation of rights shall be appreciated by the judiciary. Moreover, it no longer demands that all administrative procedures be exhausted before judicial proceedings can commence.

150. The judiciary is an independent branch of power operating in harmony with the legislative and executive branches. The existing courts are common to all members of society, courts or tribunals of exception being proscribed. No person shall be tried or convicted other than by the judiciary, nor shall they be deprived of their freedom or property without due process of law.

151. Those accused of crimes shall be ensured the right to ample defence in the trial proceedings by the adversary system and by legal remedies and may only be deemed guilty after they have been convicted and the decision has transited in rem judicatam, that is, a final, unappealable sentence has been proffered. The public nature of procedural acts is guaranteed, unless the defence of a person's privacy or of social interest requires otherwise.

152. Judicial hearings and procedural acts are generally public and are held at courthouses or in courtrooms, the day and hour being specified. The general public may only be barred if individual privacy or social interest so demand. In such cases they shall be held behind closed doors, the number of persons who may be present being limited.

153. Any judicial decision (which must be based on legal grounds, upon pain of being voided) may be subject to review at a higher stage of appeal. Indeed, sentences shall only transit in rem judicatam following review of the decision according to the terms of article 58 onwards in the Code of Criminal Procedure. The institution of the jury is acknowledged, defendants being ensured the right to ample defence, the secrecy of the votes cast by the jury and the sovereignty of the verdict it returns being ensured. Juries are competent to try cases of crimes against life involving malice aforethought.

154. The Brazilian State provides individuals with an arsenal of legal checks and remedies for correcting illegal acts and abuse of power infringing individual and collective rights, or even mere threat of the same. These are the so-called "constitutional remedies" or constitutional guarantees. The main guarantees afforded by the Constitution include habeas corpus, (individual and collective) writs of mandamus, court injunctions, habeas data, class actions and public civil actions. There is also the right to petition, by which any person is entitled formally to address public authorities, in addition to the various criminal and civil procedural instruments ordinary legislation makes available.

155. The Constitution provides protection for res judicata (art. 5, item XXXVI). Failure to comply with judicial decisions on the part of authorities constitutes liability felony (crime de responsabilidade). Vested rights and perfect juridical acts are likewise guaranteed.

156. The Constitution makes allowance for redress or compensation in cases of moral or material damage when a person's intimacy and private life have been violated and their honour and image tarnished. There is also provision for compensation for those convicted in cases of miscarriage of justice and those who have served longer than the sentence stipulated.

157. In civil law, racial equality and remedies before the courts are regulated by the Civil Code: Law No. 3,071 of 1 January 1916 states that all

men are capable of rights and obligations in the civil domain (art. 2), there being no distinction between Brazilians and foreigners as to the acquisition and enjoyment of civil rights (art. 3). Article 75 of the Civil Code states that "for every right there is a corresponding judicial action to secure it".

III. EDUCATIONAL MEASURES: ARTICLE 7 OF THE CONVENTION

158. According to the terms of the 1988 Constitution (art. 205), education is a right to which all are entitled and a duty of the State and the family. Access to free, compulsory education is thus conceived as a subjective public right. The text of the Constitution states that competent public authorities can be held responsible for failure to provide compulsory basic education as well as for irregular provision of the same.

159. The education system should ensure equal access to and permanent attendance in school and uphold pluralism of pedagogical ideas and approaches. Regular elementary education is to be transmitted in Portuguese, indigenous communities being entitled to use their own native languages and develop their own learning processes.

160. Every year the Federal Government is obliged to invest at least 18 per cent of its tax revenues in the maintenance and development of education - 25 per cent in the case of the states, the Federal District and the municipalities.

161. Full exercise of cultural rights and access to sources of Brazilian culture are also guaranteed. The Government is obliged to support and encourage the dissemination of cultural manifestations, particularly manifestations of popular culture and indigenous and Afro-Brazilian culture, and that of groups that have made a relevant contribution to Brazilian culture.

Education to combat discrimination

162. In the field of education to combat discrimination, many innovative initiatives in the sphere of the State and of society at large deserve special mention.

163. In the field of education for citizenship, at federal level the Ministry of Justice has published and distributed 2 million copies of the "Manual of Justice". This handbook uses plain, accessible language to describe basic citizen's rights and explain how the bodies of the judiciary operate. It was elaborated in collaboration with the Brazilian Magistrates' Association.

164. Studies have shown that State schools do not contribute to the elimination of the stigma of racial discrimination through the teaching practices they employ. In an attempt to respond to this problem, the São Paulo State education network - providing education for a universe of 6 million children and adolescents - is set to introduce in its syllabus a subject that will seek to discuss the issue of racism. Another noteworthy move is bill No. 3621/93, which introduces into the syllabuses of elementary and secondary schools and of history courses at Brazilian universities a

discipline called "History and Culture of Africa". The aim is to make young people more aware of the place and importance of African cultures in the social fabric and cultural make up of Brazilian society. The idea is to help preserve the memory of the Negro as one of the founding elements of Brazilian culture and of the country's historical and artistic heritage.

165. Universities in the State of São Paulo have recently incorporated into the syllabuses of their law courses a compulsory human rights discipline in which the issue of discrimination is one of the main topics.

166. The São Paulo State Justice and Education Secretariats have jointly organized a programme called "Education for Citizenship", focusing on the problem of discrimination since racism - as the Justice Secretariat acknowledges - is a form of criminality.

167. The most positive actions undertaken by the Government of the State of São Paulo include the following:

(a) Following a suggestion made by Amnesty International - seconded by the Violence Studies Nucleus and the Teotônio Vilela Commission - the State's Civil and Military Police academies have already included the subject of citizenship in their training programmes;

(b) Five thousand copies of the "Citizenship Manual" have been printed. The Manual summarizes all the rights guaranteed by the Constitution and recalls the principle that racism is a crime and not a mere misdemeanour, as was the case in the 1950s when the first version of the Afonso Arinos Law was passed;

(c) Despite representing a large proportion of the Brazilian population, the image of Negroes and mulattoes presented by means of mass communication in the country is deprecatory and they often appear in discreditable or debasing situations. In an attempt to offset this negative image, bill No. 3,791/93 has been presented concerning the inclusion of Negroes in television productions, films and advertisements. The bill stipulates that when television networks and advertising agencies are contracted by the Government or government agencies, at least 40 per cent of the actors and professionals they hire to create and produce their television programmes, commercials and advertisements must be black. The bill seeks to ensure that the image of Negroes is present in the mass media, the aim being to recover and underscore the importance of Negroes in the cultural make up of Brazilian society and to contribute to the process of racial democratization;

(d) As part of the strategy for tackling the problem of discrimination in the mass media, a 30-minute video entitled "Citizenship and Discrimination" has been prepared for broadcast on TV Cultura, the São Paulo State TV network;

(e) Bill No. 293/87 declares 20 November, the anniversary of the death of Zumbi dos Palmares and a day that the Afro-Brazilian community commemorates as "National Negro Consciousness Day", to be a national holiday. The commemoration, which pays homage to the hero of black resistance against the

oppression of seventeenth century slave-based society in Brazil, is to be included in the calendar of national events and celebrated throughout the country;

(f) Another bill (No. 4,339/93) establishes a minimum quota at least of 10 per cent of places in all institutions of higher education to be set aside for students from socially disadvantaged ethno-racial minorities (blacks and Indians).

IV. INDIGENOUS POPULATIONS

168. A novel feature of the 1988 Constitution is that it devotes a separate chapter to Brazil's Indians, acknowledging their particular forms of social organization, their customs, languages, beliefs and traditions, as well as their natural right to the lands they traditionally occupy. Besides the specific chapter, indigenous affairs are treated in a number of other constitutional provisions.

169. It should be recalled that article 5, paragraph 2, of the 1988 Constitution incorporates the rights embodied in international treaties to which Brazil is a signatory. Brazil ratified ILO Convention No. 107 (1957) concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries. Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries, meanwhile, is currently being examined by the Brazilian Congress as part of the process of ratification. Brazil also ratified the 1960 UNESCO Convention against Discrimination in Education and the International Covenant on Civil and Political Rights.

170. In the constitutional domain, demarcating indigenous territories and protecting them and their occupants' property is the preserve of the Federal Government (Constitution, art. 231). Under the terms of the Constitution, Indian lands are inalienable and unavailable, the rights pertaining thereto being imprescriptible. Exploration of the natural resources located in indigenous territories requires authorization from Congress, which must first hear the communities likely to be affected by the ensuing activities. These communities are guaranteed a share in the proceeds of the exploration of the resources of their lands.

171. Federal authorities alone may legislate on matters concerning indigenous populations (art. 22, XIV) and only federal judges have jurisdiction in disputes involving indigenous rights (art. 109, XI).

172. The Constitution has designated the Public Prosecution Service to monitor indigenous affairs. Thus, although Indians, their communities and organizations are legally entitled to bring action in defence of their rights and interests, the Public Prosecution Service intervenes at every stage of the proceedings (art. 232). Among the institutional attributions of the Public Prosecution Service is the duty to provide for the judicial defence of the rights and interests of indigenous populations (art. 129, V).

173. In the infra-institutional domain, the rights of Indians are also treated by Law No. 5,371/67, which established the National Indian Foundation, and Law No. 601/73, which established the Indian Statute.

174. It should be emphasized that article 6 of the Civil Code, elaborated in 1916 and in force to the present day, considers Indians to be relatively incapable of performing certain acts of civil life, subjecting them to a regime of tutelage "which shall gradually cease as they become adapted to the country's civilization". None the less, despite the fact that this provision has not been expressly revoked, it is clear that it has not been adopted by the new constitutional order, to the extent that this new order acknowledges the Indians' legitimate right and legal capacity to bring action in the courts in order to defend their rights (art. 232).

Factors, difficulties and government actions

175. Current estimates put the total Indian population at somewhere between 180,000 and 250,000 individuals divided into 150 different ethnic groups. There are 17 major Indian nations in Brazil today: Yanomami, Macuxi, Ticuna, Waimiri-Atroari, Cinta Larga, Karajá, Xavante, Maué, Kayapó, Arara, Guajá, Guajajara, Tapuya, Guarany-Kaiowá, Kadywew, Xacriabá and Kaingangue. These groups vary considerably in size from the Ticunas (20,000) and Yanomamis (9,000) to tribes that have been reduced to just a dozen individuals. From the 1980s onwards, the historical decline in the Indian population in Brazil, which was heading for extinction, was reversed and total numbers began to increase once more.

176. Indian lands, rich in timber and animal and mineral resources, are coveted by big mining corporations, prospectors, timber interests, squatters, farmers and traders, and are frequently subject to trespassing. The construction of highways and hydroelectric schemes has also triggered conflict between Indians and whites, besides spreading diseases to which they are peculiarly vulnerable. The struggle to gain control of the riches located in Indian territories has often led to killing on both sides. Disputes involving Indians and prospectors have been a serious problem in the Yanomami territories, in Serra Pelada, in the upper reaches of the River Negro and in the State of Rondônia. According to the Attorney General's Office, more than 1,000 Yanomamis have been killed since 1975.

177. The Isolated Indian Populations Department at the National Indian Foundation (FUNAI) believes that there are still about 75 groups that have no contact with Brazilian society. These groups are particularly vulnerable in terms of violation of human rights since they are not able to contact federal authorities on matters relating to their lands or other guarantees.

178. There are 519 indigenous areas in Brazil which, all told, occupy 10.53 per cent of the country's entire territory. These areas are generally located in distant, unsettled areas to which access is difficult. In the Amazon Region alone, Indians possess by constitutional right an area of 711,000 square kilometres, equivalent to the combined territories of Austria, Belgium, Germany and the United Kingdom. All the Yanomami territories (9.6 million hectares - about three times the size of Belgium) had already been demarcated in 1992. This meant that by 1992 half the Indian territories in Brazil had already been demarcated. Of the 80 indigenous areas located in

the States of Rondônia, Acre and the south of Amazonas, 22 have been demarcated, 32 have been reconnoitred and identified and 25 are awaiting confirmation.

179. The beginning of demarcation operations and the consequent expulsion of prospectors and other illegal clandestine workers from the reserves has aggravated the violence of the conflicts. Mining equipment and clandestine landing strips are systematically destroyed by police authorities, generating discontent among the prospectors and aggressive resentment towards the Indians.

Administrative measures

180. In the last two years 35 administrative rulings have been issued demarcating Indian lands. All the requests for demarcation which FUNAI submitted in documented files produced ministerial administrative rulings prior to the deadline for demarcation stipulated by the Constitution: 5 October 1993. Since 1991, seven decrees on Indian matters have been issued. Decrees 22 to 27, for instance, deal respectively with the process of demarcation of Indian lands, the provision of health care for indigenous populations, protection of the environment in Indian lands, self-sustaining programmes and projects for Indians, indigenous education, the Review Commission for the Indian Statute (whose task is to adapt the Statute to make it consonant with the 1988 Constitution), the competence of the Federal Justice Department and, finally, Decree 73,332/73, which establishes norms for identifying and demarcating indigenous lands.

181. Since the 1980s, Brazil's Indian population and sectors of civil society (the Brazilian Bishops' Synod-CNBB, the Brazilian Anthropologists' Association-ABA, the Missionary-Indigenist Council-CIMI) have been organizing to protect the rights of Indians. Public and private organizations specially geared to solving their problems include the National Indian Foundation-FUNAI, the Union of Indigenous Nations-UNI and the Indigenist Activities Centre-CTI set up in 1979 to protect indigenous projects and raise funds abroad.

182. The National Health Foundation has been carrying out periodic examinations, with support from WHO and the World Bank, to monitor the health of the indigenous population in the Amazon Basin and in the States of Roraima and Mato Grosso. There are a total of 110 people directly involved in treating the Indians' health. Malaria affects roughly 20 per cent of the Yanomamis and is still the main cause of death among them.

183. With reference to health care, one should also mention Decree No. 23, which makes allowance for the elaboration of specific projects for promoting, protecting and restoring the health of Indians, according to the peculiarities of each community.

184. With regard to education, Decree No. 26 makes the Ministry of Education responsible for coordinating indigenous education at all levels and for all kinds of teaching. Interministerial administrative ruling No. 559/MJ-MEC of 16 April 1991 guarantees bilingual education for Indians in their mother tongue and the official language (Portuguese) determines that the processes by which they transmit and assimilate knowledge must be duly respected, and establishes a National Indigenous Education Coordination Department at the Ministry of Education.

185. Finally, Administrative Ruling No. 828/FUNAI of 5 August 1991, creates the Indigenous Rights Defence Commission, attached to FUNAI, in which a number of different bodies and organizations of civil society, such as the Action for Citizenship Movement, the Brazilian Anthropology Association, the Brazilian Bar Association and the Federal Public Prosecution Service, participate.

186. In February 1993, the Ministry of Justice resumed the "Free Forest" Operation in order to clear nine Yanomami reserves that had been invaded by prospectors - approximately 4,000 in Roraima and 3,000 in Amazonas. The operation mobilized 221 men from the army and air force, and from the Ministries of Social Welfare, Health and Justice. By the end of September, the operation had removed 4,279 prospectors from Yanomami lands and seized all the equipment in their possession.

187. On 26 August 1993, the Ministry of Justice issued Administrative Ruling No. 327, ordering the Federal Police Secretariat immediately to set up a Federal Police post inside Yanomami territory, following the death of a group of Yanomami Indians in the State of Roraima, the aim being to prevent and combat crimes against the lives and property of the Indian community.

Notes

1/ Signed in New York on 7 March 1966, the Convention was approved by Legislative Decree No. 23 of 21 June 1967 and ratified by Brazil on 27 March 1968. It came into force in Brazil on 4 January 1969 and was finally promulgated by Decree No. 65,810 of 8 December 1969, published in the Official Gazette on 10 December 1969.

2/ On discrimination against blacks in the labour market, see: Carlos Hasenbalg (1992), "O negro na indústria: proletarização tardia e desigual". CIÊNCIAS SOCIAIS HOJE, 1992. Rio de Janeiro, Rio Fundo/ANPOCS, 13-31; Luiza Helena de Barros et al. (1992), "Negros e brancos em um mercado de trabalho em mudança". CIÊNCIAS SOCIAIS HOJE, 1992. Ibid., pp. 32-54; Josidelth Gomes Consorte (1991), "A questão do negro: velhos e novos desafios". SÃO PAULO EM PERSPECTIVA. Revista da Fundação SEADE. São Paulo, 5 (1): 85-92, January-March.

3/ Research based on data from the 1976 National Home Sampling Survey (PNAD) revealed that, when education, age and sex were controlled, race emerged as the only variable capable of explaining variations in income. Quoted in Thomas Skidmore, O Brasil Visto de Fora (Brazil Seen from Outside), 1994.

4/ The full text of Decree 91,524 is transcribed in the ninth periodic report submitted by Brazil in 1986 (CERD/C/149/Add.3).

5/ The text of the Afonso Arinos Law is transcribed in the report submitted in 1970 (CERD/C/R.3/Add.11).